

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 9967
)	
Appeal of)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying him as a recipient of Medicaid either an increase in his personal needs allowance or a deduction from his income for the installation and monthly payments on a telephone. The issue is whether the Department's decisions are in accord with the pertinent regulations.

FINDINGS OF FACT

The petitioner is a terminally-ill Aids patient who resides in a Level II long-term care facility.¹ At present he is paralyzed from the waist down. He has few personal contacts either inside the home or from visitors. His most important source of emotional support is his eighty-seven-year-old mother. Because his mother is herself limited in her activities the petitioner relies heavily on daily telephone contact with her. Recently, the petitioner had a private phone installed next to his bed.

The petitioner's sole source of income is Social Security (OASDI) disability benefits. Because he is in a long-term care facility as a Medicaid patient, all his income except for a \$40.00 "personal needs allowance" must

be used to pay the facility where he resides (see infra).

The petitioner's phone bill is \$30.00 a month for basic "limited access" charges. With this type of service, the petitioner cannot make calls beyond his local dialing area.

(His mother lives within a local telephone call of the facility.) As of the date of the hearings² (September 6 and 14, 1990) the petitioner's phone bill was current.

There is little question that a phone is essential to the petitioner's medical well-being. In brief notes obtained by his advocates, the petitioner's doctor and psychologist stated (respectively):

"I am currently the attending physician for [petitioner], a patient who resides at the [convalescent center] in [city] Vermont. I have been requested to write a letter on his behalf specifically regarding the provision of a monthly telephone allowance currently not afforded him.

[Petitioner] is suffering from a chronic illness for which there is no cure and for which the prognosis is grim. His physical and mental statues are subject to fluctuations on a daily basis and may occur without warning. [Petitioner's] mother has been a very supportive figure throughout his illness and continues to be an important factor in the maintenance of [petitioner's] overall health. I think it is reasonable and appropriate that [petitioner] be afforded the convenience of a bedside telephone, enabling him to make local telephone calls to his mother in order to enlist her support and keep her abreast of daily changes in his condition."

* * * *

"I am writing to let you know that as the psychologist working as part of the treatment team for [petitioner], it has become clear that a telephone is a necessity for [petitioner] at this time. It is his only lifeline to his eighty-year-old mother who is his only family support."

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual   M 413 provides, in pertinent part:

Applied Income Computation

A long-term care resident's applied income is the amount of monthly income (defined below) remaining after the following deductions are made in the order listed below:

A deduction for personal needs (see procedures manual); plus

A deduction, where applicable, for expenses of maintaining a home; (see Home Upkeep Deduction); and

A deduction, where applicable, for the maintenance needs of a spouse and/or other family members living in the community (see Allocations to Family Members).

Monthly income means the individual's gross monthly income without deducting income exclusions allowed for income eligibility computation. . .

There do not appear to be any additional "deductions" from income allowable under the regulations.

The Department's Procedures Manual sets the "personal needs allowance" rate for all Vermont (non-SSI) residents of long-term care facilities³ at \$40.00. Medicaid Procedures Manual   P-2435(f). The hearing officer knows of no basis to require the Department to pay any individual residing in a long-term care facility a higher personal needs amount based on individual need. See Fair Hearing No. 3662⁴

At the hearing the Department, the petitioner's advocates, and the hearing officer spoke candidly with each

other about the petitioner's situation and of possible alternatives for the petitioner if his \$40.00 personal needs allowance was insufficient to allow him to keep his phone plus pay for other "incidental" needs.⁵ If such an "emergency" situation arises (i.e., the petitioner is faced with the imminent loss of his phone or he cannot obtain something else "medically necessary"), the petitioner can reapply for appropriate assistance at that time (and appeal any denial).

In the meantime, the petitioner (through his advocates) and the Department are encouraged to explore possible amendments to the Medicaid regulations (and, perhaps other programs) to better accommodate the unique needs of AIDS patients.⁶ The hearing officer was greatly impressed with the sincerity, dedication, and courtesy of the petitioner's representatives. He wishes them well in their attempts to achieve greater benefits and dignity for the unfortunate victims of this dreaded disease.

FOOTNOTES

¹See Medicaid Manual §§ M 900 et. seq.

²The petitioner, himself, did not appear at the hearing. He was ably represented, however, by two members of a local AIDS advocacy and support group.

³See Medicaid Manual §§ M 900 et. seq.

⁴In Fair Hearing No. 3662, the board held that the federal regulations allowed the Department to set a single state-wide personal needs allowance applicable to all residents of long-term care facilities. However, at pp, 6 -

7 of its decision in Fair Hearing No. 3662 (dated January 19, 1984), the board observed as follows:

"Another troubling aspect of this case is that it is clear that the "needs" of individual nursing home residents probably vary greatly depending on each individual's physical and mental capabilities. It appears that the federal regulations (according to an interpretation by the U. S. Department of Health and Human Services) allow for, if not actively encourage, the setting of different PNI amounts based on the differing needs of classes of residents of institutions. (See H.H.S. Medicaid Assistance Manual 9 4-4-30). If it were feasible, it would seem equitable and desirable that the department attempt to establish an objective means of identifying individuals who, like the petitioner, demonstrate greater "needs" than other long-term care residents and at least allow them a higher PNI allowance. Hopefully, the Department will consider amending (its regulations) along these lines."

⁵According to Medicaid Manual 9 M 920, the nursing home should be providing the petitioner with all necessary "bathroom supplies . . . used in daily care."

⁶See footnote 4, supra.

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